

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANDREA GROVE, and TOM GROVE,)	
)	
Plaintiffs,)	8:12CV95
)	
v.)	
)	
MATTHEW HERRICK, in his official and individual capacities, MARK CERNY, in his official and individual capacities, and THE CITY OF RALSTON, NEBRASKA,)	MEMORANDUM AND ORDER ON PLAINTIFFS' MOTION TO STRIKE OR ALLOW RESPONSE
)	
Defendants.)	
)	

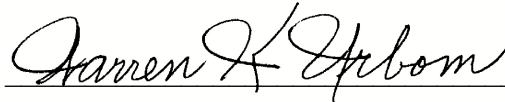
On August 3, 2012, the defendants, Matthew Herrick, Mark Cerny, and the City of Ralston, Nebraska, filed a motion to dismiss the complaint filed by the plaintiffs, Andrea Grove and Tom Grove. (ECF No. 14.) In support of their motion, the defendants argued that 1) this court should abstain from deciding the claims presented in the plaintiffs' complaint and dismiss this case in deference to an ongoing state action, and 2) the plaintiffs' claims should be dismissed for failure to state a claim upon which relief may be granted because the plaintiffs "have [pleaded] nothing more than mere negligence, which is not actionable under the United States Constitution." (Defs.' Br. at 3, 6, ECF No. 16.) The plaintiffs responded to the defendants' arguments in a brief filed on August 27, 2012. (See generally Pls.' Br., ECF No. 17.) On September 20, 2012, the defendants filed a reply brief in support of their motion to dismiss. (ECF No. 21.) In Section II of this reply brief, the defendants argued for the first time that "Tom Grove lacks standing to assert a claim under § 1983 and his action for purported violations of his civil rights should accordingly be dismissed for failure to state a cognizable claim upon which relief can be granted." (Id. at 4.) Now before me is the plaintiffs' motion to strike Section II of the defendants' reply brief, or in the alternative, to permit the plaintiffs to file a response to the defendants' new argument. (ECF No. 22.) The defendants have not responded to the plaintiffs' motion.

This court's local rules state that a reply brief "must address factual or legal issues raised in the opposing brief." NECivR 7.0.1(c). The argument presented in Section II of the defendants' reply brief introduces a new legal issue that was not raised in the plaintiffs' response brief or in the defendants' opening brief. Thus, Section II does not comply with Nebraska Civil Rule 7.0.1(c), and it shall not be considered.

IT IS ORDERED that the plaintiffs' motion to strike Section II of the "Defendants' Reply Brief in Support of Motion to Dismiss," (ECF No. 22), is granted; the plaintiffs' alternative motion for leave to file a supplemental brief, (ECF No. 22), is denied as moot.

Dated November 7, 2012.

BY THE COURT

A handwritten signature in black ink, reading "Warren K. Urbom", is written over a horizontal line.

Warren K. Urbom
United States Senior District Judge